

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
(DULUTH DIVISION)**

TRAVIS ZUMWALT,

Plaintiff,

Court File No.: _____

v.

ADVANCED MARKETING &
PROCESSING, INC. d/b/a PROTECT
MY CAR,

Defendant.

NOTICE OF REMOVAL

Defendant Advanced Marketing & Processing, Inc. d/b/a Protect My Car (“Protect My Car” or “Defendant”), pursuant to 28 U.S.C. § 1331, 1441(a), and 1446, with full reservation of all defenses, hereby removes this action from Conciliation Court in the Ninth Judicial District in and for Cass County, Minnesota to the United States District Court for the District of Minnesota, Duluth Division. In support of this Notice of Removal, Protect My Car states as follows:

I. Background

1. On or about July 5, 2019, Plaintiff Travis Zumwalt (“Zumwalt”) filed a Statement of Claim in Conciliation Court in the Ninth Judicial District, Cass County, Minnesota (the “Statement of Claim”) against Protect My Car. A true and correct copy of the Statement of claim and other papers served upon Protect My Car is attached hereto as **Exhibit “A”**.

2. The suit arises from “8 illegal calls” allegedly made by Protect My Car to Zumwalt in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (“TCPA”).

3. On July 22, 2019, Protect My Car was served in Florida (via its registered agent) with a copy of the Statement of Claim.

4. Pursuant to the Summons accompanying the Statement of Claim, Protect My Car must appear in Conciliation Court in the Ninth Judicial District on August 29, 2019.

5. Protect My Car now timely removes this action to this Court.

II. Basis for Jurisdiction

6. This Court has jurisdiction over this removed action pursuant to 28 U.S.C. §§ 1331 and 1441(a). This claim could have been originally filed in this Court pursuant to 28 U.S.C. § 1331, as this Court has original jurisdiction over all civil actions arising under the “Constitution, laws, or treaties of the United States.”

7. Zumwalt’s Statement of Claim asserts violations of a federal law, namely the TCPA. *See generally* Ex. A. The Supreme Court of the United States in *Mims v. Arrow Financial Services LLC*, 132 S. Ct. 740, 747-53 (2012), addressed the issue of whether the federal district courts have jurisdiction over TCPA claims, holding that such a claim is, in fact, one that “arises under” the laws of the United States. As such, this Court has federal question jurisdiction over this matter.

8. Indeed, pursuant to 28 U.S.C. § 1441(a), “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.” Thus, this Court has federal question jurisdiction.

9. Based upon the foregoing, this Court has federal question jurisdiction over this action and venue is proper in this Court.

III. Rule of Unanimity

10. The requirement that all Defendants consent to and join a notice of removal in order for it to be effective is referred to as the “rule of unanimity.” *See generally Alliance Energy Services, LLC v. Kinder Morgan Cochin LLC*, 80 F. Supp. 3d 963, 969 (D. Minn. 2015). The “rule of unanimity” has been codified as 28 U.S.C. § 1446(b)(2)(A), which provides that “[w]hen a civil action is removed solely under section 1441(a), all defendants who have been properly joined and served must join in or consent to the removal of the action.”

11. Protect My Car is the only Defendant in this action and files this Notice of Removal. Accordingly, the rule of unanimity is satisfied.

IV. Notice Given

12. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal will be promptly served on Zumwalt, and a copy will be promptly filed with the Clerk of the Ninth Judicial District in and for Cass County, Minnesota.

V. Removal is Timely Filed

13. This Notice has been timely filed within thirty (30) days of Protect My Car’s being served with the Statement of Claim on July 22, 2019, as required by 28 U.S.C. § 1446(b)(2).

VI. Pleadings and Process

14. As required by 28 U.S.C. § 1446(a), copies of all state court process and pleadings actually served upon Protect My Car are attached to this Notice of Removal as Exhibit A.

VII. Venue

15. Pursuant to 28 U.S.C. § 1441(a), venue in this District Court is proper for purposes of removal because this action is currently pending in Conciliation Court in the Ninth

Judicial District in and for Cass County, Minnesota, which is in the same District as the United States District Court for the District of Minnesota.

VIII. Non-Waiver of Defenses

16. Nothing in this Notice shall be interpreted as a waiver or relinquishment of Protect My Car's rights to assert any defense or affirmative matter, including, without limitation, motions to dismiss pursuant to Federal Rule of Civil Procedure 12.

ACCORDINGLY, pursuant to 28 U.S.C. §§ 1331, 1441(a), and 1446, this Court has jurisdiction over this matter, and Defendant Advanced Marketing & Processing, Inc. d/b/a Protect My Car hereby removes this action from Conciliation Court in the Ninth Judicial District in and for Cass County, Minnesota, to this Court.

Dated: August 9, 2019

/s/ Amy J. Swedberg
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Filed in District Court
State of Minnesota

JUL - 5 2019

State of Minnesota

Conciliation Court

County of: Select County <u>Cass</u>	Judicial District: Court File Number: <u>11-CD-79-96</u> Case Type: Conciliation
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STATEMENT OF CLAIM AND SUMMONS

Plaintiff #1

Name: <u>Iravis Zumwalt</u>
Address: <u>3446 Larson LK RD NW</u>
City/State/Zip: <u>Hackensack, MN 56452</u>

Plaintiff #2

Name:
Address:
City/State/Zip:

Defendant #1

Name: <u>Protect my Car</u>
Address: <u>570 Carillon Pkwy</u> <u>Ste 300</u>
City/State/Zip: <u>Saint Petersburg, FL 33714</u>

Defendant #2

Name:
Address:
City/State/Zip:

☐ Check box if there are more than two plaintiffs or more than two defendants. List the information for the other parties on the *Additional Litigants Form*, CCT702.

PLAINTIFF'S STATEMENT OF CLAIM

1. I am filing this claim against Defendant for: (check all that apply)

☒ The Defendant owes me \$ 8,000, plus filing fees and costs in the amount of \$ 75, so my total claim is for \$ 8,075 (amount Defendant owes plus filing fees and costs). I have a claim for this amount because in

(month and year), the following happened (briefly describe):

- Telephone Consumer Protection Act (TCPA)
- Illegal Calls
- Sent E-mails + Letters via mail.
- Refuse to take Responsibility For their Actions
- I never opted in for Communication + Have all the proof needed.

☐ The Defendant has the following property that belongs to me (list property):

My property is valued at \$ _____. The filing fees and costs for this case are \$ _____. I want the court to order this property returned to me or make the Defendant pay me \$ _____ (property's value plus the filing fees and costs).

2. I believe the person I am suing is at least 18 years old.

Defendant #1 date of birth: _____ / ☐ Unknown.

Defendant #2 date of birth: _____ / ☐ Unknown.

If a defendant is a business, leave this section blank for that defendant.

3. About military service:

Defendant #1 is ☐ in the military service / ☐ is not in the military service ☐ Unknown.

Defendant #2 is ☐ in the military service / ☐ is not in the military service ☐ Unknown.

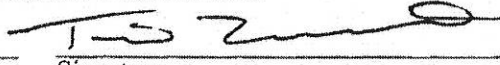
If a defendant is a business, leave this section blank for that defendant.

4. I understand that if I do not come to court on my hearing date, my case may be dismissed and I may have to pay money to the Defendant on any counterclaim that has been filed.

I declare under penalty of perjury that everything that I have stated in this document is true and correct. Minn. Stat. § 358.116.

Important! Each plaintiff must sign the *Statement of Claim and Summons* form and include the date signed, the name of the state and county where signed, and provide the following information: title, if any, telephone number, and e-mail address.

Dated: 7/5/19


Signature

County and State where signed _____

Name: Travis Zumwalt

Address: 3446 Larson LK RD NW

City/State/Zip: Hackensack, MN, 56452

Telephone: 763/576-0118

E-mail address: Travis.Zumwalt8@gmail.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by email and U.S. first class mail on this 9th day of August, 2019, to the Plaintiff at the following:

Travis Zumwalt
3446 Larson Lake Road NW
Hackensack, MN 56452
TravisZumwalt8@gmail.com

/s/ Amy J. Swedberg
Amy J. Swedberg, Esq.